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| 10/090,358      | 03/04/2002  | David Tumey          | VAC.702.US          | 3855             |

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10/28/2003

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EXAMINER

TRUONG, LINH T

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 10/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/090,358

Applicant(s)

TUMEY, DAVID

Examiner

Linh Truong

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ 6) ☐ Other: \_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 4-5, and 9 are rejected under 35 U.S.C. 102(e) as being anticipated by Henley et al. (Henley) '6,458,109.

For claims 1, 4, 5, and 9, Henley teaches a wound treatment apparatus with a bandage assembly that includes a drainage bandage 20 (screen means) that contacts the wound and a delivery bandage 18 that seals the drainage bandage 20 and the wound site (col. 5, lines 11-17), a vacuum source fluidically communicating with the drainage bandage 20 via flexible tube 24, a sensing device (172 or 174) interposed between the delivery bandage and the vacuum source, and a collection canister (164 or 166) interposed between the drainage bandage 20 and the sensing device (172 or 174) (figs. 1 and 19 and col. 13, lines 1-3).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Henley et al. (Henley) '6,458,109 in view of Overton et al. '5,611,846.

For claims 2-3, Henley does not teach that the sensing device comprises a gas chromatograph comprising of a photo diode. Gas chromatographs are commonly used in the art to identify the contents of gaseous samples. Overton et al. teaches a portable gas chromatograph comprising a photoionization (which contains a photo diode) detector (col. 12, lines 23-26). Therefore it is obvious to one with ordinary skill in the art at the time the invention was made to substitute the sensor of Henley for the gas chromatograph of Overton et al. in order to detect microorganisms in the drainage fluids.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Henley et al. (Henley) '6,458,109 in view of Lewis et al. '6,017,440.

For claim 4, Henley does not teach that the sensing device comprises a sensor array. Lewis et al. teach sensor arrays for detecting microorganisms. Therefore it is obvious to one with ordinary skill in the art at the time the invention was made to substitute the sensor of Henley for the sensor array of Lewis et al. in order to detect microorganisms in the drainage fluids.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Henley et al. (Henley) '6,458,109 in view of Scherson et al. '5,855,570.

For claim 6, Henley does not disclose a dressing (screen means) that is embedded with a sensing device. Scherson et al. teaches an oxygen- producing bandage with several layers, wherein one of the layers comprise a sensor (col. 4, lines 31-39). Therefore it is obvious to one with ordinary skill in the art at the time the invention was made to provide the invention of Henley with a dressing embedded with a sensor in order to detect the pressure in the atmosphere at the wound area.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Henley et al. (Henley) '6,458,109 in view of Fleischmann '6,398,767.

For claim 7, Henley does not teach that the sensing device is disposed on sealing means. Fleischmann teaches a wound treatment apparatus that comprises a sealing means 14 and a sensing device 38 that is disposed on the sealing means 14 and is in contact with a screen means 12 ( fig.1 and col. 4, lines 62-64). Therefore, it is obvious to one with ordinary skill in the art at the time the invention was made to provide the sealing means of Henley with a sensing device to detect the pressure in the atmosphere near the wound area.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Henley et al. (Henley) '6,458,109 in view of Parker et al. '4,955,391.

For claim 8, Henley discloses a canister and a sensing device outside of the canister but does not disclose a sensing device located in the canister. It is well known in the art that canisters are used as collection devices for fluids, and, thus, the fluids can be assessed. Parker et al. teaches a fluid monitoring apparatus comprising a canister 22 with a sensing probe 64 mounted inside the canister (col.5, lines 16-21). Therefore, it is obvious to one with ordinary skill in the art at the time the invention was made to modify the location of the sensing device from being placed outside of the canister to being placed within the canister for more accurate sensing of pressure within the canister.

**Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent 6,190,858 is drawn to an apparatus for detecting microorganisms using gas sensors.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Linh Truong whose telephone number is 706-605-4974. The examiner can normally be reached on M-F 8:30am-5pm.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

Linh Truong

*L.T.*

  
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SUPERVISORY PATENT EXAMINER  
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